

that one is a broadcaster and one is a common carrier, the latter of which would justify a four-fold increase of the fine over that of the broadcaster. And, such explanation must include the Commission's reasons for making the distinction that it has between common carriers and broadcasters, and the relevance of those differences to the purposes of the Communications Act. See Columbia Broadcasting System, Inc. v. FCC, 454 F. 2d 1018, 1026 (D.C. Cir. 1971); see Melody Music, Inc. v. FCC, 345 F. 2d 730, 733 (D.C. Cir. 1965).

The unreasonableness of the proposed disparate penalties becomes even more apparent if one assumes an unauthorized transfer of control by both a broadcaster and a common carrier (and there is no voluntary disclosure, similar compliance histories and both can afford to pay the fine from gross profits). The transfer of control of a broadcaster will have a much greater potential to harm the public because of the broadcaster's heightened responsibility as a public trustee. See RKO General, Inc., 78 FCC 2d 1, 47-48 (1980). Thus, the new owner may change the station format, and may bring about a change in the integration of ownership and management, thereby making the station less responsive to its community of service. With regard to common carrier facilities, ownership changes are generally transparent to the public, since the new owner usually continues to provide the common carrier service in the same manner.

Because of this unjustified and extreme disparity in the treatment of similarly situated licensees, the proposed Forfeiture Policy Statement is arbitrary due to its discriminatory impact, and should therefore not be adopted, as proposed. The proposed Forfeiture Policy Statement would also appear to violate the equal protection clause of the U.S. Constitution. It is well established that the concept of equal protection, embodied in the Fourteenth Amendment, is applicable to the U.S. government and its agencies through the due process clause of the Fifth Amendment. See Johnson v. Robison, 415 U.S. 361, 364 n. 4 (1974); Richardson v. Belcher, 404 U.S. 78, 81 (1971); Trudo v. Warden, U.S. Penitentiary, Lewisburg, PA, 453 F. Supp. 665, 669 (M.D. Pa. 1977). Mobile Phone submits that equal protection demands that governmental regulations be reasonable and fair, so that "all persons similarly situated [are] treated alike." City of Cleburne, Tex v. Cleburne Living Center, 473 U.S. 432, 439 (1985); See Trudo, 453 F. Supp. at 669; Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

For the reasons stated above, the Commission's proposal lacks a rational basis for the class distinction between common carriers and similarly situated broadcasters, in that the gross disparity in fines that are issued to members of the respective classes will not further any Congressional mandate, and thus, has no logical justification. In that there is no rational relation to a legitimate public purpose for the Commission to treat common carriers so differently, Mobile Phone urges the Commission to

adopt a uniform forfeiture standard under which all of its licensees are treated equally, without class distinction.

#### **VI. Conclusion.**

The proposed Forfeiture Policy Statement should be substantially revamped so that the forfeitures imposed would be remedial in nature, rather than punitive. As proposed, the Commission's forfeiture guidelines violate the universal service mandate of Section 1 of the Act, and are likely to lead to a curtailment of vital communications services to the public, especially in rural areas. Because substantial fines would be imposed under the Forfeiture Policy Statement, the proposed forfeiture guidelines contravene the small business protections afforded by the Paperwork Reduction Act and the Regulatory Flexibility Act.


The forfeitures in the proposed Forfeiture Policy Statement are much more severe than those previously assessed prior to the adoption of the Commission's now vacated Forfeiture Policy Statement. While it is clear that Congress amended Section 503(b) of the Act in order to adjust for inflation that had occurred over the years, Mobile Phone submits that, in creating the proposed forfeiture guidelines, the Commission has improperly interpreted Congress' intent. Without reasoned explanation, the Commission has substantially raised the level of the monetary forfeitures, in relation to the statutory maximum, from 0.1 to 0.5 percent of the statutory maximum to a minimum of five percent for some minor violations, and up to 80 percent of the statutory

maximum for most other violations. Adoption of this standard, without adequate explanation and justification, is arbitrary and capricious. Finally, the Commission should readjust its proposed forfeiture schedule to eliminate the gross disparities in forfeitures between common carrier and broadcast licensees since the Commission has provided no justification for its proposal to discriminate between them. Adoption of the Commission's proposal would be discriminatory and would violate the Equal Protection Clause of the Constitution. In making this adjustment, Mobile Phone recommends, at a minimum, that the Commission use the forfeiture base amounts established in its "Other" category for all licensees, unless such base amounts would not, in a particular case, provide sufficient deterrent to impel compliance with the Commission's Rules.

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